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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-741

MY STORE, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

UNITED RETAIL WORKERS UNION,
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE U. S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MEMORANDUM OF RESPONDENT, UNITED RETAIL WORKERS UNION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE U. S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

UNITED RETAIL WORKERS UNION,
Respondent,

RUSSELL PACKARD,
One North La Salle Street,
Chicago, Illinois 60602,
Its Attorney.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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PRELIMINARY STATEMENT.

Respondent, United Retail Workers Union, the Intervenor below, adopts for the purpose of this Memorandum the material in the Memorandum in Opposition of the National Labor Relations Board.

INTRODUCTION.

The Union Respondent respectfully opposes the granting of the Employer's petition for *certiorari* as it raises no substantial legal questions as required this Court's Rule 19(1), and is but a further example of Petitioner's persistent record of delay described in detail herein. It is unworthy of this Court's time and should be denied forthwith.

Petitioner attempts to play upon the Court's sympathy by asserting its petition was prepared by a poor "country lawyer" (p. 18), little versed in court or administrative procedures, and to such end states that one of the legal questions presented is whether the Petitioner "had a raw deal from his government" (sic).

The petition blandly notes it will not be "cluttered up with references to a record too voluminous to expect a busy Court to probe at this stage of the 'game' " (p. 3), and then hopefully safe from any check against the record improperly attempts to reargue the issues of the main case it lost six years ago in 147 N. L. R. B. 145, affm'd 345 F. 2d 494 (C. A. 7), *cert. denied,* 382 U. S. 927.

In doing so it plunges into what can be called nothing less than an emotional bath concerning a "mom & pop" store owned by a man "from a big family," a "push cart peddler, who quit school to help out", etc., etc., and built up a large enterprise, who although a "bootstraps rugged individualist" was "meek as a mouse!"

It was no "poor country lawyer" who drew such a petition; nor was it a "poor country lawyer" who has kept this case going for **upwards of ten years** without his client ever having spent a cent in compliance with the law. Only an artful lawyer could accomplish such a record of delay

which now rivals that of *Jarndyce* v. *Jarndyce,* Dicken's infamous case!

STATEMENT.

Little need be done to expose this pretense and Petitioner's obdurate opposition to the law other than point to the record dates on file with the Clerk of this Court or stated in the main decision below, 345 F. 2d 494:

12/62 Employees of Petitioner start organizational campaign.

2/21/63 Employees vote Respondent union as their bargaining representative in an National Labor Relation Board election.

5/63 Unfair labor practice charges filed by Respondent union with National Labor Relations Board as Petitioner failed to bargain and engaged in other unlawful action.

12/63 Trial Examiner upholds charges and finds Petitioner a deliberate violator of the law.

5/64 National Labor Relations Board decision issued affirming the Trial Examiner, finding numerous law violations by Petitioner, and ordering backpay. 147 N. L. R. B. 145.

4/7/65 Seventh Circuit Court of Appeal's decision enforcing the Board's order, 345 F. 2d 494.

6/4/65 Petitioner's motion for rehearing of Court's order denied.

11/22/65 U. S. Supreme Court denies *certiorari,* 382 U. S. 927.

This last date marks two years and nine months, almost to the day, for the entire administrative and judicial process to be completed.

10/66 Board is forced by Petitioner's continued intransigence for a year to petition the Court of Appeals to hold Petitioner and its owner in contempt.

12/66 The Court refers the matter of contempt to a special master and a long hearing ensues with full briefs.

11/67 The special master files his report with the Court.

4/7/68 The Court of Appeals issues its order upon the report, adjudging in civil contempt Petitioner and also its owner, one Podeschi, since he had knowledge and the power to make Petitioner comply, but "instead has aided and abetted Petitioner's refusal to comply." No petition for a writ of *certiorari* was ever filed to review this contempt adjudication. Delay and exploitation of countless procedural motions were the tactics employed.

4/68 Petitioner moves for a rehearing before the entire complement of judges of the Court of Appeals, *en banc,* counsel apparently not trusting the usual panel further.

4/68 The Court of Appeals orders summary compliance with its earlier order in 10 days, under pain of arrest of its aforesaid owner.

6/68 Petitioner having finally complied on those matters which do not cost it money, the Court of Appeals remands the back pay issue to the Board for further proceedings. 67 L. R. R. M. 2733, 2734.

Here one sees that it has taken a year and eight months just to force Petitioner to comply with a portion of the

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Court's own order—yet Petitioner's talents for avoidance of its duty to obey the law are still to be fully exercised:

10/68 The Board promptly issues its back pay specifications pursuant to the Court's order.

1/69 Trial Examiner's hearing on the specifications—full litigation and briefs.

6/69 Trial Examiner's decision ordering that back pay be paid.

2/70 Board's supplemental decision—$97,018 due the injured employees, with interest at 6%, which adds thousands more due them now because of Petitioner's protracted delaying tactics, 181 N. L. R. B. 321.

The employees are now seven years from that fateful election of February 1963 when they first sought the protection of the labor code of the country yet Petitioner has still not been made to comply with the law. Petitioner knows the amount it owes them and has the opportunity of paying its score with the public. Does it do so? Of course not:

3/70 Motion by Petitioner to extend time to file motion to reconsider the Board's $97,018 back pay decision.

6/70 Board denies Petitioner's motion to reconsider decision.

Petitioner has used up another four months—does it now comply and pay the $97,018 it owes its employees? Indeed not—accordingly the Board's overtaxed appellate section is forced to file an application for a supplemental decree with the Court of Appeals in June, 1971. Now commences another round of delaying tactics:

7/15/71 Motion to the Court to extend time to August 13, 1971 for Petitioner to answer.

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Such continued frivolous abuse of the judicial process causes the charging union, Respondent here, to file its motion to intervene and opposition to any further procedural delays before the Court of Appeals on July 20, 1971.

7/22/71 The Court grants intervention and specifically states in its order that Petitioner may have no further extension beyond August 13, 1971 to file its answer.

7/28/71 Petitioner moves to reconsider the order allowing Intervention, which is denied August 4, 1971 by the Court of Appeals.

8/13/71 Petitioner finally files its answer to Board's application for supplemental decree enforcing its $97,018 back pay award almost six years since the Supreme Court refused to review the Court of Appeals decision in the main case which originally ordered such back pay.

Presumably having been forced at last to meet the simple issue of whether it should pay the $97,018 back pay ordered to its hapless employees, Petitioner instead resorts to a flurry of additional motions delaying the case for almost a year further:

9/24/72 Petitioner moves to strike the Board's brief.

12/28/72 Petitioner moves to recall briefs to designate references.

4/28/72 Petitioner moves to change date of oral argument.

5/4/72 Petitioner moves for additional time for oral argument.

On May 25, 1972, the back pay case was finally argued before Mr. Justice Clark, and Circuit Judges Stevens and Swygert, and on September 14, 1972 the Court's unani-

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mous opinion and judgment enforcing the Board's supplemental order on the $97,018 back pay issued, ... F. 2d ——.

Petitioner does not comply even at this point but continues its obdurate delaying tactics:

9/28/72	Petitioner's motion in opposition to Board proposed order.
10/16/72	Petitioner moves to limit force of judgment by actually attempting to change its name in the judgment! Denied.
10/18/72	Mandate and adjudication issued by Court of Appeals.
11/1/72	Petitioner moves for stay—Denied.*

With such a record, Petitioner now comes a second time to this Court.

In words so apt that one might think he were particularly considering the inordinate delays of this very case, the Chief Justice of the United States, addressing the Second Circuit Judicial Conference at Manchester, Vermont on September 10, 1971, castigated delays in both trials and appeals, saying in part:

> "The public image of justice, like justice itself, is indivisible. The public does not distinguish between federal and state courts and it is not concerned with the details or interested in excuses.
>
> When a case "takes 2, 3, 5 or more years to complete, . . . people make judgments. To them 'courts

*Typical of Petitioner's *bona fides* throughout this case is its attempt here to give the impression that the Court of Appeals harshly treated it in denying such stay, asserting its motion was "supported by a performance bond" (p. 18); this assertion is incorrect. Its motion merely stated it was "prepared" to post a bond and was not accompanied by one, as it would have this Court believe. Some eight weeks of negotiation passed before it presented an order to the Court of Appeals for the deposit of $112,000 of bank certificates of deposit with the Court Clerk in lieu of bond.

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are courts,' 'jails are jails' 'delay is delay.' . . . They are paying the bills . . . and they want results.

"What the public thinks, therefore, becomes the measure of public confidence in the courts, and that confidence is indispensable."

"This is . . . a matter of . . . making sure that no cases are delayed by someone exploiting procedure for the sole purpose of delay . . . In civil cases in which large public interests are at stake the supervisory techniques we apply to criminal cases must also be used.

"Our immediate task, therefore, is to develop methods of identifying the cases that are likely to fail within (such group) and then make sure that no unavoidable delays are exploited to defer the disposition of such cases.

"It is not a program for the future, but a program for now, . . . It needs action."

Where can a more vivid example of delay be found than the ten years of Petitioner's contemptuous twists and turnings in this case, which have yet to be ended?

$100,000 and more in back pay and interest has long been due the aggrieved employees, yet Petitioner continues to "exploit procedure to defer disposition" of the case.

The petition for writ of *certiorari* should be denied.

Respectfully submitted,

UNITED RETAIL WORKER'S UNION,
Respondent.

Russell Packard,
One North La Salle Street,
Chicago, Illinois 60602,
Its Attorney.

January 2, 1973.